

Message Text

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ORIGIN EB-07

INFO OCT-01 EUR-12 ISO-00 L-02 JUSE-00 TRSE-00 CAB-05

CIAE-00 COME-00 DODE-00 DOTE-00 INR-07 NSAE-00 RSC-01

FAA-00 IO-10 /045 R

DRAFTED BY EB/CBA/BP:RJBUSHNELL:VJW

APPROVED BY EB/CBA/BP:HJWINTER

EB/TT - JMEADOWS

EUR/CE - SSTEINER

L/EB - TTALLERICO

JUSTICE - DROSENTHAL (SUBS)

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R 180011Z JAN 75

FM SECSTATE WASHDC

TO AMEMBASSY BONN

INFO USMISSION USBERLIN

USMISSION OECD PARIS

UNCLAS STATE 012341

E.O. 11652: N/A

TAGS: ETRD, GW

SUBJECT: US-FRG ANTITRUST COOPERATION

REF: A) STATE 240973, 11/1/74; B) BONN A-571, 11/19/74

1. AS EMBASSY AWARE, DEPARTMENT AND USG ANTITRUST ENFORCEMENT AGENCIES ARE SERIOUSLY CONSIDERING FRG PROPOSAL FOR AGREEMENT INTENSIFYING AND BROADENING ALREADY CLOSE COOPERATION BETWEEN OUR GOVERNMENTS IN THE ANTITRUST FIELD. DR. KLAUS STAHL OF THE ECONOMICS MINISTRY FIRST MADE THE PROPOSAL IN EARLY 1974, STATING THAT SUCH AN AGREEMENT WOULD FACILITATE THE EXCHANGE OF INFORMATION REQUIRED TO INVESTIGATE AND PROSECUTE ANTITRUST CASES IN BOTH COUNTRIES.

2. IN VIEW OF THE FRG PROPOSAL (AS WELL AS THE 1967 AND UNCLASSIFIED

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1973 OECD RECOMMENDATIONS CALLING FOR NOTIFICATION, CON-

SULTATION AND CONCILIATION AMONG MEMBER STATES ON ANTI-TRUST MATTERS), ASSISTANT ATTORNEY GENERAL THOMAS KAUPER HAS WRITTEN TO DR. STAHL ASKING FOR FRG ASSISTANCE IN OBTAINING THE COOPERATION OF LUFTHANSA REGARDING AN INTERNATIONAL AIR CARRIER ANTITRUST INVESTIGATION. UNLESS THE EMBASSY PERCEIVES OBJECTIONS, PLEASE PASS THE TEXT OF THE KAUPER LETTER (QUOTED BELOW) TO DR. STAHL AS PROMPTLY AS POSSIBLE. THE ORIGINAL SIGNED LETTER BEING AIR POUCHED TODAY FOR DELIVERY TO STAHL UPON RECEIPT.

3. PLEASE CABLE WHEN TEXT OF LETTER COMMUNICATED TO STAHL, INCLUDING HIS INITIAL REACTION TO THE REQUEST.

4. KAUPER LETTER READS:

-- THE UNITED STATES DEPARTMENT OF JUSTICE IS INVESTIGATING A POSSIBLE VIOLATION OF THE ANTITRUST LAWS OF THE UNITED STATES OF AMERICA (SECTION 1 OF THE SHERMAN ACT) RELATING TO AN ALLEGED AGREEMENT TO FIX TRANSATLANTIC AIR FARES IN A PRIVATE, INFORMAL MANNER NOT SUBJECT TO DULY CONSTITUTED AND APPROVED INTERNATIONAL AIR TRANSPORT ASSOCIATION ("IATA") PROCEDURES.

-- INTERNATIONAL AIR CARRIERS HAVE U.S. GOVERNMENT APPROVAL TO AGREE TO FIX INTERNATIONAL FARES (WHICH INVOLVE TRANSPORTATION TO AND FROM U.S. POINTS) ONLY IN ACCORDANCE WITH PROCEDURES ADOPTED BY IATA. IF SUCH PROCEDURES ARE ADHERED TO AND CIVIL AERONAUTICS BOARD APPROVAL IS OBTAINED, ANY PRICE FIXING AGREEMENT DULY NEGOTIATED IS SPECIFICALLY EXEMPT FROM THE ORDINARY OPERATION OF U.S. ANTITRUST LAWS. HOWEVER BECAUSE OUR NATIONAL POLICY PLACES A HIGH PREMIUM ON A COMPETITIVE ECONOMIC SYSTEM, EVEN PRICE FIXING ARRANGEMENTS WHICH CAN RECEIVE OFFICIAL GOVERNMENT SANCTION ARE CLOSELY AND CAREFULLY SCRUTINIZED TO INSURE THAT THE AGREEING PARTIES DO NOT EXCEED THE BOUNDARIES OF THEIR ANTITRUST EXEMPTION.

-- THE DEPARTMENT OF JUSTICE NOW HAS REASON TO BELIEVE THAT UNAUTHORIZED PRICE FIXING IN INTERNATIONAL AIR TRANSPORTATION MAY HAVE TAKEN PLACE AS A CONSEQUENCE OF UNCLASSIFIED

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A MEETING OR SERIES OF MEETINGS HELD IN GENEVA, SWITZERLAND IN DECEMBER OF 1972. OUR INFORMATION INDICATES THAT A REPRESENTATIVE OF LUFTHANSA, THE NATIONAL CARRIER OF THE FEDERAL REPUBLIC OF GERMANY, PROBABLY ATTENDED A DECEMBER 14 MEETING IN WHICH WE ARE PARTICULARLY INTERESTED. ACCORDINGLY, IT APPEARS THAT YOUR NATIONAL CARRIER OR ITS OFFICIALS MAY POSSESS KNOWLEDGE AND INFORMATION, DOCUMENTARY OR OTHERWISE, WHICH COULD MATERIALLY

AID OUR INVESTIGATION.

-- WE HEREBY REQUEST YOUR ASSISTANCE IN OBTAINING THE COOPERATION OF LUFTHANSA FOR OUR REVIEW OF WHATEVER PERTINENT INFORMATION ABOUT THIS MATTER IT POSSESSES. TO THIS END, WE ARE PREPARED TO GRANT ASSURANCES THAT NEITHER LUFTHANSA (NOR ANY OF ITS PERSONNEL) WILL BE PROSECUTED FOR CRIMINAL VIOLATIONS OF UNITED STATES ANTITRUST LAWS ARISING OUT OF THIS INVESTIGATION.

-- IF LUFTHANSA AND ITS PERSONNEL COOPERATE IN OUR INVESTIGATION, WE WILL MAKE EVERY EFFORT TO ARRANGE FOR INTERVIEWS, (AND GRAND JURY SESSIONS IF THAT IS FELT NECESSARY BY THE DEPARTMENT OF JUSTICE) TO SUIT THE CONVENIENCE OF SUCH PERSONNEL. FURTHERMORE, ALL NECESSARY ACTION WILL BE TAKEN TO REIMBURSE THEM FOR ANY OUT OF POCKET EXPENSES -- HOTELS, MEALS AND TRANSPORTATION -- RELATING TO THE FURNISHING OF INFORMATION.

-- WE HAVE TAKEN THIS MATTER UP ON A GOVERNMENT TO GOVERNMENT BASIS FIRST -- PRIOR TO CONTACTING LUFTHANSA ITSELF -- TO FOSTER THE SPIRIT OF COOPERATION AND MUTUAL ASSISTANCE IN RESPECT TO ANTITRUST ENFORCEMENT WHICH IS A LONG TERM GOAL OF BOTH OUR GOVERNMENTS. MOREOVER, WE HAVE CONTACTED YOUR AGENCY FIRST IN DEFERENCE TO THE RECOMMENDATION OF THE COUNCIL OF THE OECD OF 1967 AND 1973 WHICH CALLS FOR NOTIFICATION, COORDINATION, CONSULTATION, AND CONCILIATION AMONG MEMBER STATES, AND WHICH IMPLIES THE UNDERSTANDING THAT MEMBER STATES ARE TO MAKE REASONABLE EFFORTS TO ASSIST EACH OTHER IN THE ENFORCEMENT BY EACH MEMBER STATE OF ITS RESTRICTIVE BUSINESS PRACTICE LAWS AS TO MATTERS THAT SUCH STATE CONSIDERS HARMFUL TO INTERNATIONAL TRADE.

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-- SO THAT THE INVESTIGATION MAY PROCEED EXPEDITIOUSLY, WOULD YOU BE SO KIND AS TO ADVISE ME AT YOUR EARLIEST CONVENIENCE OF YOUR VIEWS AS TO THE BEST WAY TO PROCEED IN OBTAINING THE DESIRED INFORMATION FROM LUFTHANSA. SINCERELY YOURS, THOMAS E. KAUPER, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION. KISSINGER

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Margaret P. Grafeld
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